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In the Supreme Court of the United States

OCTOBER TERM 1946

PACKARD MOTOR CAR COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH
CIRCUIT**

**MEMORANDUM FOR THE NATIONAL LABOR RELATIONS
BOARD**

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No. 638

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MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

While we believe that the decision below is correct, we agree with petitioner that it presents an important question which has not been but should be decided by this Court. We therefore join with petitioner in requesting that a writ of certiorari issue to review the decision below. The remainder of this memorandum is devoted solely to clarification of some of the matters involved so that this Court may be fully advised as to the Board's position.

The first question raised by petitioner is whether its foremen are employees within the meaning of the Act (Pet. 7). On this issue the Board and every court which has passed on the

subject have been unanimous. See cases cited in the Board's decision (R. III, 1793-1794), and particularly *Matter of Soss Mfg. Co.*, 56 N. L. R. B. 348.

The issue on which the Board has divided (Pet. 14) is whether the Board should hold that foremen do not fall within any unit appropriate for the purposes of collective bargaining. The effect of such a holding would be to exclude foremen from the protection of Section 8 (5) of the Act, which requires employers to bargain collectively with properly chosen employee representatives. In *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733, the Board reversed an earlier line of decisions and held that it should exclude the foremen there involved from any appropriate bargaining unit. In the instant case the Board overruled that decision and held that, assuming that it had power to withhold the protection of Section 8 (5) from foremen, it would not do so here. In a subsequent decision, the Board went further and held that it had no power to deprive supervisory employees of statutory bargaining rights by holding that they could not constitute an appropriate bargaining unit. *Matter of L. A. Young Spring & Wire Corp.*, 65 N. L. R. B. 298. We shall urge upon this Court, as in the court below, both that the Board does not have the power to exclude employees from all bargaining units which it purported to exercise in the *Maryland Drydock* case

and declined to exercise in the instant case, and that, assuming that it has such power, it was not an abuse of its discretion to refuse to exercise it here.

For the reasons stated, the Board does not oppose the granting of the writ of certiorari as prayed in the petition.

Respectfully submitted.

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NOVEMBER, 1946.